IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.8.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.506 of 2007

Kandasamy .. Petitioner

Vs

1. State rep. by the
   Secretary to Government
   Prohibition and Excise Department
   Fort St. George, Secretariat
   Chennai-600 009.

2. The District Magistrate
   and District Collector
   Kancheepuram District
   Kancheepuram. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.S.Swamidoss Manokaran
For Respondents : Mr.Paul Noble Devakumar
Government Advocate

O R D E R

(Made by P.D.DINAKARAN,J.)

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The petitioner, who is the brother of detenue, Selvi Surya, daughter of Ponnurangam, who was incarcerated by order dated 23.3.2007 of the second respondent under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding her as a Bootlegger, has preferred this writ petition for issue of a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated

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23.3.2007 in his Office Ref. No.BDFGISSV.No.21/2007 against the petitioner's sister, Surya, daughter of Ponnurangam, now confined at Special Prison for Women, Puzhal, Chennai 66, to set aside the same and to direct the respondents to produce the above said detenue before this Court and set her at liberty.

2. On 1.3.2007, the Inspector of Police, Chunambedu Police Station, along with police party, while conducting prohibition raid at Sirumailur Village, found a woman, the detenue herein, possessing three white colour plastic cans and pouring some liquid in a plastic tumbler and giving to the persons standing in front of her. On seeing the police people, the persons who drank it ran away. The said woman also tried to escape from that place, but she got caught by the police. It was found that the three cans contained 104 litres of country arrack. The detenue was arrested at 9.45 hours and a case was registered in Crime No.110 of 2007 on the file of Chunambedu Police Station under Sections 4(1)(i), 4 (1)(aaa) and 4(1-A) of the Tamil Nadu Prohibition Act. Samples of country arrack were taken and were sent for chemical analysis, which disclosed that the arrack was mixed with atropine of more than 11.41% mg, which would be injurious and also fatal, if it not treated vigorously.

3. The second respondent, taking note of this case as a ground case and finding that there are three adverse cases pending against the detenue for the offences punishable under Sections 4(1)(aaa), 4(1)(a) and 4(1-A) of the Tamil Nadu Prohibition Act, and having satisfied that there is a compelling necessity to detain the detenu in order to prevent her from indulging in the activities which are prejudicial to the maintenance of public order and public health, ordered her detention dubbing her as a Bootlegger.

4. The learned counsel for the petitioner, inviting our attention to the request made to the Doctor dated 9.3.2007 wherein the sponsoring authority had signed with date as 11.3.2007 and the Doctor's certificate dated 10.3.2007 wherein the date alone is handwritten, contends that when the sponsoring authority had signed the request on 11.3.2007, the Doctor could not have been issued the certificate on 10.3.2007 and therefore, the documents are prepared earlier and only the dates are being filled up at the time of requirement. Accordingly, the non-application of mind of the detaining authority to the above facts vitiates the order of detention.

5. A perusal of the documents relied upon by the learned counsel for the petitioner, viz. the request made to the Doctor dated 9.3.2007 with the signature of the sponsoring authority with date as 11.3.2007 and the certificate issued by the Doctor dated 10.3.2007 clearly shows the non application of mind of the detaining authority. Accordingly, holding that the contention of the learned counsel for the petitioner that the documents are prepared in advance is supported with materials, the

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impugned order of detention dated 23.3.2007 is set aside. The detenu is directed to be set at liberty forthwith unless her presence is required in connection with any other case.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

kpl

To

1. The Secretary to Government
   Prohibition and Excise Department
   Fort St. George, Secretariat, Chennai-600 009.

2. The District Magistrate and District Collector
   Kancheepuram District, Kancheepuram.

3. The Public Prosecutor
   High Court, Madras.

4. The Superintendent,
Special Prison for Women,
Puzhal, Chennai 600 066.
[In duplicate for communication to the detenu]

5. The Joint Secretary to Government
Public [Law and Order]
Fort St. George, Chennai 9.

H.C.P.No.506 of 2007

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